SUPREME COURT OF THE UNITED STATES.

No. 145.

HENRY A. HALL, PLAINTIFF,

vs.

WILLIAM SMITH.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MARYLAND.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-four.

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; the honorable Upton S. Heath, judge of Maryland district; Z. Collins Lee, esquire, attorney; Thomas B. Pottenger, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

HENRY A. HALL,
vs.
WILLIAM SMITH.

District of Maryland, circuit court of the United States, April term, 1844.

The declaration in this case contained counts, in the usual form, for money lent and advanced, money paid, laid out and expended, and money had and received, and an averment that the defendant was a citizen of the State of Mississippi, and the plaintiff of the State of Maryland. Plea, non-assumpsit and issue upon it. The suit was instituted July 3d, 1843.

At the trial of the case, the plaintiff offered in evidence the two notes hereinafter inserted, with the endorsements thereon, and further offered in evidence to prove that the defendant being indebted to a certain Philip Thornton in the sum of money hereinafter mentioned, the said Thornton brought suit against him in Baltimore county court, in the State of Maryland, on the 18th of July, 1839; while the writ was in the hands of the sheriff, and before the service thereof on the defendant, it

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was agreed between Smith and the attorney of Thornton, that Smith should be permitted, on his honor, to go into an adjoining county to see his friends, to procure security, in order to relieve himself from said suit. He went and returned; and on the 29th July, 1839, in the State aforesaid, gave two promissory notes to Thornton, dated August 10th, 1839, one for $2,678 90, payable on the 1st of April, 1840, and the other for $2,669, payable on the 1st of June, 1840; both of which notes were endorsed by a certain James S. McCaleb and a certain James Kent, as securities for the said Smith; and upon receiving these notes so indorsed, Thornton discontinued the suit against Smith. These notes were not paid at maturity, and were protested for non-payment; and in June, 1840, Thornton brought suit on both of them, against McCaleb, the endorser, in Baltimore county court, upon which he, McCaleb, was arrested, and being in the hands of the sheriff, he applied to a certain Richard Lemmon, of the city of Baltimore, to become his bail. McCaleb was the son-in-law of Henry A. Hall, the plaintiff, who resides in the State of Maryland, about forty miles distant from the city of Baltimore, and Lemmon being the intimate friend of the said Hall, and knowing McCaleb to be his son-in-law, agreed to become his bail, from the confidence he had that the plaintiff would save him harmless; and he entered bail accordingly in both of these suits.

That at the first interview Lemmon afterwards had with the plaintiff, the latter introduced the subject, and without waiting for any application from Lemmon, assured him that he, the plaintiff, would save him harmless; and Lemmon having entire confidence in his verbal promise, did not ask any written security. Pending these suits, Smith paid part of one of the notes, and before judgment was obtained upon either of them, Hall paid the balance of the last mentioned note, and upon an agreement made with the attorney of Thornton, a suit by Philip Thornton versus Henry Hall, the plaintiff, was docketed by consent on the 7th September, 1840, in the circuit court of the United States for the district of Maryland, and on the declaration was endorsed a direction to the clerk to enter judgment for the amount of the damages in the nar., to be released on payment of $2,669, with interest from the 1st of January, 1840, and costs, with stay of execution, until 1st July, 1841; which was signed by the attornies for the plaintiff and defendant. That, accordingly, at the next term of said court, in November, 1840, on the 4th day of the month, said judgment was entered, and the suits against McCaleb, in which Lemmon was bail, according to an arrangement between the counsel of Thornton, McCaleb and Hall were dismissed, having been countermanded on 1st September, 1840, in consequence of an agreement made between said parties, Thornton, McCaleb and Hall, previous to said countermand, that said suit should be docketed by consent, and judgment confessed, as was afterwards done in the manner above stated.

The judgment was confessed in the circuit court, in order to create a lien upon the real estate of Hall, which being situated in a part of Maryland which was not within the jurisdiction of Baltimore county court, it was supposed that a judgment in that court would not be a lien upon it.

Upon the confession of this judgment in the circuit court, the notes above mentioned were delivered to Hall by the attorney of Thornton, a part of this judgment was paid to the attorney of Thornton, by a draft of Smith in favor of McCaleb, upon a house in New Orleans, and the balance due upon it was paid by Hall on the 30th of June, 1841. James S. McCaleb died in the State of Mississippi, of which he was a citizen, in the summer of 1842, and letters of administration on his estate were afterwards, on the 28th day of November, in the year 1842, granted by the proper authority in that State, to Jonathan McCaleb; and on the 20th of May, 1843, the administrator assigned to Hall, the plaintiff in this case, the notes aforesaid.

The notes, with the several indorsements and assignments thereon, are as follows, to wit:

$2,669. BALTIMORE, *August* 10*th*, 1839.

On the first day of January next, I promise to pay to the order of James S. McCaleb, twenty-six hundred and sixty-nine dollars, for value received, payable and negotiable at the Union Bank of Maryland.

WM. SMITH.

4 Jan'y, 1840—J. G., N. P. Non-payment.
No. given—H. & S.
(Endorsements.)—651. Wm. Smith, 2,669. Jan'y 1.

JAMES S. McCALEB,
JAMES KENT.

In consideration that the amount of the within note, with interest thereon, was paid by Henry A. Hall, esq'r, in behalf of James S. McCaleb, dec'd, the endorser thereon, now I do hereby assign to said Henry A. Hall, said note.

JONA. McCALEB, *Adm'r of*
JAS. S. McCALEB, *dec'd.*

May 20th, 1843.

$2,678 90. BALTIMORE, *August* 10*th*, 1839.

On the first day of April next, I promise to pay to the order of James S. McCaleb, twenty-six hundred and seventy-eight dollars $\frac{90}{100}$, for value received, payable and negotiable at the Union Bank of Maryland.

WM. SMITH.

Ap'l 1. Prot. non-payment, 4th April, 1840.
(Endorsed)—*Union*, 583. Wm. Smith, 2,678 90. April 1

JAS. S. McCALEB,
JAMES KENT.

Baltimore, July 13th, 1840. $1,500. By cash rec'd of Jas. S. McCaleb, on act., the within fifteen hundred dollars.

JNO. M. GORDON, *Att'y for*
P. THORNTON.

$400. July 24th.—By cash, $400. JOHN M. GORDON.
200. By cash, two hundred dollars. Aug. 3d, 1840.
J. M. GORDON.